

BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

JANET ANNE CUMMING
3477 Township Ave
Simi Valley, CA 93063

Registered Nurse License No. 282757
Public Health Nurse Certificate No. 28052

Respondent

Case No. 2008-310

OAH No. L-2009040801

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board of Registered Nursing, Department of Consumer Affairs, as its Decision in the above entitled matter.

This Decision shall become effective on **January 14, 2010**.

IT IS SO ORDERED **December 14, 2009**.



President
Board of Registered Nursing
Department of Consumer Affairs
State of California

1 EDMUND G. BROWN JR.
Attorney General of California
2 GREGORY J. SALUTE
Supervising Deputy Attorney General
3 TERRENCE M. MASON
Deputy Attorney General
4 State Bar No. 158935
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-6294
6 Facsimile: (213) 897-2804
Attorneys for Complainant

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8 **BEFORE THE**
BOARD OF REGISTERED NURSING
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:

Case No. 2008-310

11 **JANET ANNE CUMMING**
12 **3477 Township Ave.**
13 **Simi Valley, CA 93063**

OAH No. L-2009040801

14 **Registered Nurse License No. 282757**
15 **Public Health Nurse Certificate No. 28052**

STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER

16 Respondent.

17
18 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
19 entitled proceedings that the following matters are true:

20 PARTIES

21 1. Ruth Ann Terry, M.P.H., R.N. (Complainant) was the Executive Officer of the Board
22 of Registered Nursing. She brought this action solely in her official capacity and was represented
23 in this matter by Edmund G. Brown Jr., Attorney General of the State of California, by Terrence
24 M. Mason, Deputy Attorney General.

25 2. Janet Anne Cumming (Respondent) is representing herself in this proceeding and has
26 chosen not to exercise her right to be represented by counsel.
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28

3. On or about August 31, 1977, the Board of Registered Nursing issued Registered Nurse License No. 282757 to Respondent Janet Anne Cumming. The Registered Nurse License was in full force and effect at all times relevant to the charges brought in Accusation No. 2008-310. It expired on May 31, 2009, and has not been renewed.

4. On or about April 18, 1979, the Board of Registered Nursing issued Public Health Nurse Certificate No. 28052 to Respondent Janet Anne Cumming. The Public Health Nurse Certificate was in full force and effect at all times relevant to the charges brought in Accusation No. 2008-310. It expired on May 31, 2009, and has not been renewed.

JURISDICTION

5. Accusation No. 2008-310 was filed before the Board of Registered Nursing (Board), Department of Consumer Affairs, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on May 12, 2008. Respondent filed a Notice of Defense contesting the Accusation. A copy of Accusation No. 2008-310 is attached as Exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

6. Respondent has carefully read, and understands the charges and allegations in Accusation No. 2008-310. Respondent has also carefully read, and understands the effects of this Stipulated Settlement and Disciplinary Order.

7. Respondent is fully aware of her legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to be represented by counsel at her own expense; the right to confront and cross-examine the witnesses against her; the right to present evidence and to testify on her own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

8. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

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Severability Clause. Each condition of probation contained herein is a separate and distinct condition. If any condition of this Order, or any application thereof, is declared unenforceable in whole, in part, or to any extent, the remainder of this Order, and all other applications thereof, shall not be affected. Each condition of this Order shall separately be valid and enforceable to the fullest extent permitted by law.

Criminal Court Orders: If Respondent is under criminal court orders, including probation or parole, and the order is violated, this shall be deemed a violation of these probation conditions, and may result in the filing of an accusation and/or petition to revoke probation.

Upon successful completion of probation, Respondent's license shall be fully restored.

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1 4. **Residency, Practice, or Licensure Outside of State.** Periods of residency
2 or practice as a registered nurse outside of California shall not apply toward a reduction of this
3 probation time period. Respondent's probation is tolled, if and when she resides outside of
4 California. Respondent must provide written notice to the Board within 15 days of any change of
5 residency or practice outside the state, and within 30 days prior to re-establishing residency or
6 returning to practice in this state.

7 Respondent shall provide a list of all states and territories where she has ever been licensed
8 as a registered nurse, vocational nurse, or practical nurse. Respondent shall further provide
9 information regarding the status of each license and any changes in such license status during the
10 term of probation. Respondent shall inform the Board if she applies for or obtains a new nursing
11 license during the term of probation.

12 5. **Submit Written Reports.** Respondent, during the period of probation,
13 shall submit or cause to be submitted such written reports/declarations and verification of actions
14 under penalty of perjury, as required by the Board. These reports/declarations shall contain
15 statements relative to Respondent's compliance with all the conditions of the Board's Probation
16 Program. Respondent shall immediately execute all release of information forms as may be
17 required by the Board or its representatives.

18 Respondent shall provide a copy of this Decision to the nursing regulatory agency in every
19 state and territory in which she has a registered nurse license.

20 6. **Function as a Registered Nurse.** Respondent, during the period of
21 probation, shall engage in the practice of registered nursing in California for a minimum of 24
22 hours per week for 6 consecutive months or as determined by the Board.

23 For purposes of compliance with the section, "engage in the practice of registered nursing"
24 may include, when approved by the Board, volunteer work as a registered nurse, or work in any
25 non-direct patient care position that requires licensure as a registered nurse.

26 The Board may require that advanced practice nurses engage in advanced practice nursing
27 for a minimum of 24 hours per week for 6 consecutive months or as determined by the Board.

28 If Respondent has not complied with this condition during the probationary term, and

1 Respondent has presented sufficient documentation of her good faith efforts to comply with this
2 condition, and if no other conditions have been violated, the Board, in its discretion, may grant an
3 extension of Respondent's probation period up to one year without further hearing in order to
4 comply with this condition. During the one year extension, all original conditions of probation
5 shall apply.

6 **7. Employment Approval and Reporting Requirements.** Respondent shall
7 obtain prior approval from the Board before commencing or continuing any employment, paid or
8 voluntary, as a registered nurse. Respondent shall cause to be submitted to the Board all
9 performance evaluations and other employment related reports as a registered nurse upon request
10 of the Board.

11 Respondent shall provide a copy of this Decision to her employer and immediate
12 supervisors prior to commencement of any nursing or other health care related employment.

13 In addition to the above, Respondent shall notify the Board in writing within seventy-two
14 (72) hours after she obtains any nursing or other health care related employment. Respondent
15 shall notify the Board in writing within seventy-two (72) hours after she is terminated or
16 separated, regardless of cause, from any nursing, or other health care related employment with a
17 full explanation of the circumstances surrounding the termination or separation.

18 **8. Supervision.** Respondent shall obtain prior approval from the Board
19 regarding Respondent's level of supervision and/or collaboration before commencing or
20 continuing any employment as a registered nurse, or education and training that includes patient
21 care.

22 Respondent shall practice only under the direct supervision of a registered nurse in good
23 standing (no current discipline) with the Board of Registered Nursing, unless alternative methods
24 of supervision and/or collaboration (e.g., with an advanced practice nurse or physician) are
25 approved.

26 Respondent's level of supervision and/or collaboration may include, but is not limited to the
27 following:

28 (a) Maximum - The individual providing supervision and/or collaboration is present in

1 the patient care area or in any other work setting at all times.

2 (b) Moderate - The individual providing supervision and/or collaboration is in the patient
3 care unit or in any other work setting at least half the hours Respondent works.

4 (c) Minimum - The individual providing supervision and/or collaboration has person-to-
5 person communication with Respondent at least twice during each shift worked.

6 (d) Home Health Care - If Respondent is approved to work in the home health care
7 setting, the individual providing supervision and/or collaboration shall have person-to-person
8 communication with Respondent as required by the Board each work day. Respondent shall
9 maintain telephone or other telecommunication contact with the individual providing supervision
10 and/or collaboration as required by the Board during each work day. The individual providing
11 supervision and/or collaboration shall conduct, as required by the Board, periodic, on-site visits to
12 patients' homes visited by Respondent with or without Respondent present.

13 9. **Employment Limitations.** Respondent shall not work for a nurse's
14 registry, in any private duty position as a registered nurse, a temporary nurse placement agency, a
15 traveling nurse, or for an in-house nursing pool.

16 Respondent shall not work for a licensed home health agency as a visiting nurse unless the
17 registered nursing supervision and other protections for home visits have been approved by the
18 Board. Respondent shall not work in any other registered nursing occupation where home visits
19 are required.

20 Respondent shall not work in any health care setting as a supervisor of registered nurses.
21 The Board may additionally restrict Respondent from supervising licensed vocational nurses
22 and/or unlicensed assistive personnel on a case-by-case basis.

23 Respondent shall not work as a faculty member in an approved school of nursing or as an
24 instructor in a Board approved continuing education program.

25 Respondent shall work only on a regularly assigned, identified and predetermined
26 worksite(s) and shall not work in a float capacity.

27 If Respondent is working or intends to work in excess of 40 hours per week, the Board may
28 request documentation to determine whether there should be restrictions on the hours of work.

1 10. **Complete a Nursing Course(s).** Respondent, at her own expense, shall
2 enroll and successfully complete a course(s) relevant to the practice of registered nursing no later
3 than six months prior to the end of her probationary term.

4 Respondent shall obtain prior approval from the Board before enrolling in the course(s).
5 Respondent shall submit to the Board the original transcripts or certificates of completion for the
6 above required course(s). The Board shall return the original documents to Respondent after
7 photocopying them for its records.

8 11. **Cost Recovery.** Respondent shall pay to the Board costs associated with
9 its investigation and enforcement pursuant to Business and Professions Code section 125.3 in the
10 amount of \$4,749.00. Respondent shall be permitted to pay these costs in a payment plan
11 approved by the Board, with payments to be completed no later than three months prior to the end
12 of the probation term.

13 If Respondent has not complied with this condition during the probationary term, and
14 Respondent has presented sufficient documentation of her good faith efforts to comply with this
15 condition, and if no other conditions have been violated, the Board, in its discretion, may grant an
16 extension of Respondent's probation period up to one year without further hearing in order to
17 comply with this condition. During the one year extension, all original conditions of probation
18 will apply.

19 12. **Violation of Probation.** If Respondent violates the conditions of her
20 probation, the Board after giving Respondent notice and an opportunity to be heard, may set aside
21 the stay order and impose the stayed discipline (revocation/suspension) of Respondent's license.

22 If during the period of probation, an accusation or petition to revoke probation has been
23 filed against Respondent's license or the Attorney General's Office has been requested to prepare
24 an accusation or petition to revoke probation against Respondent's license, the probationary
25 period shall automatically be extended and shall not expire until the accusation or petition has
26 been acted upon by the Board.

27 13. **License/ Certificate Surrender.** During Respondent's term of probation,
28 if she ceases practicing due to retirement, health reasons or is otherwise unable to satisfy the

1 conditions of probation, Respondent may surrender her license and/or certificate to the Board.
2 The Board reserves the right to evaluate Respondent's request and to exercise its discretion
3 whether to grant the request, or to take any other action deemed appropriate and reasonable under
4 the circumstances, without further hearing. Upon formal acceptance of the tendered license and
5 wall certificate, Respondent will no longer be subject to the conditions of probation.

6 Surrender of Respondent's license and/or certificate shall be considered a disciplinary
7 action and shall become a part of Respondent's license history with the Board. A registered nurse
8 whose license has been surrendered may petition the Board for reinstatement no sooner than the
9 following minimum periods from the effective date of the disciplinary decision:

10 (1) Two years for reinstatement of a license that was surrendered for any reason other
11 than a mental or physical illness; or

12 (2) One year for a license surrendered for a mental or physical illness.

13 14. **Physical Examination.** Within 45 days of the effective date of this
14 Decision, Respondent, at her expense, shall have a licensed physician, nurse practitioner, or
15 physician assistant, who is approved by the Board before the assessment is performed, submit an
16 assessment of the Respondent's physical condition and capability to perform the duties of a
17 registered nurse. Such an assessment shall be submitted in a format acceptable to the Board. If
18 medically determined, a recommended treatment program will be instituted and followed by the
19 Respondent with the physician, nurse practitioner, or physician assistant providing written reports
20 to the Board on forms provided by the Board.

21 If Respondent is determined to be unable to practice safely as a registered nurse, the
22 licensed physician, nurse practitioner, or physician assistant making this determination shall
23 immediately notify the Board and Respondent by telephone, and the Board shall request that the
24 Attorney General's office prepare an accusation or petition to revoke probation. Respondent shall
25 immediately cease practice and shall not resume practice until notified by the Board. During this
26 period of suspension, Respondent shall not engage in any practice for which a license issued by
27 the Board is required until the Board has notified Respondent that a medical determination
28 permits Respondent to resume practice. This period of suspension will not apply to the reduction

1 of this probationary time period.

2 If Respondent fails to have the above assessment submitted to the Board within the 45-day
3 requirement, Respondent shall immediately cease practice and shall not resume practice until
4 notified by the Board. This period of suspension will not apply to the reduction of this
5 probationary time period. The Board may waive or postpone this suspension only if significant,
6 documented evidence of mitigation is provided. Such evidence must establish good faith efforts
7 by Respondent to obtain the assessment, and a specific date for compliance must be provided.
8 Only one such waiver or extension may be permitted.

9 **15. Participate in Treatment/Rehabilitation Program for Chemical**
10 **Dependence.** Respondent, at her expense, shall successfully complete during the probationary
11 period or shall have successfully completed prior to commencement of probation a Board-
12 approved treatment/rehabilitation program of at least six months duration. As required, reports
13 shall be submitted by the program on forms provided by the Board. If Respondent has not
14 completed a Board-approved treatment/rehabilitation program prior to commencement of
15 probation, Respondent, within 45 days from the effective date of the decision, shall be enrolled in
16 a program. If a program is not successfully completed within the first nine months of probation,
17 the Board shall consider Respondent in violation of probation.

18 Based on Board recommendation, each week Respondent shall be required to attend at least
19 one, but no more than five 12-step recovery meetings or equivalent (e.g., Narcotics Anonymous,
20 Alcoholics Anonymous, etc.) and a nurse support group as approved and directed by the Board.
21 If a nurse support group is not available, an additional 12-step meeting or equivalent shall be
22 added. Respondent shall submit dated and signed documentation confirming such attendance to
23 the Board during the entire period of probation. Respondent shall continue with the recovery plan
24 recommended by the treatment/rehabilitation program or a licensed mental health examiner
25 and/or other ongoing recovery groups.

26 **16. Abstain from Use of Psychotropic (Mood-Altering) Drugs.** Respondent
27 shall completely abstain from the possession, injection or consumption by any route of all
28 controlled substances and all psychotropic (mood altering) drugs, including alcohol, except when

1 the same are ordered by a health care professional legally authorized to do so as part of
2 documented medical treatment. Respondent shall have sent to the Board, in writing and within
3 fourteen (14) days, by the prescribing health professional, a report identifying the medication,
4 dosage, the date the medication was prescribed, the Respondent's prognosis, the date the
5 medication will no longer be required, and the effect on the recovery plan, if appropriate.

6 Respondent shall identify for the Board a single physician, nurse practitioner or physician
7 assistant who shall be aware of Respondent's history of substance abuse and will coordinate and
8 monitor any prescriptions for Respondent for dangerous drugs, controlled substances or mood-
9 altering drugs. The coordinating physician, nurse practitioner, or physician assistant shall report
10 to the Board on a quarterly basis Respondent's compliance with this condition. If any substances
11 considered addictive have been prescribed, the report shall identify a program for the time limited
12 use of any such substances.

13 The Board may require the single coordinating physician, nurse practitioner, or physician
14 assistant to be a specialist in addictive medicine, or to consult with a specialist in addictive
15 medicine.

16 17. **Submit to Tests and Samples.** Respondent, at her expense, shall
17 participate in a random, biological fluid testing or a drug screening program which the Board
18 approves. The length of time and frequency will be subject to approval by the Board.
19 Respondent is responsible for keeping the Board informed of Respondent's current telephone
20 number at all times. Respondent shall also ensure that messages may be left at the telephone
21 number when she is not available and ensure that reports are submitted directly by the testing
22 agency to the Board, as directed. Any confirmed positive finding shall be reported immediately
23 to the Board by the program and Respondent shall be considered in violation of probation.

24 In addition, Respondent, at any time during the period of probation, shall fully cooperate
25 with the Board or any of its representatives, and shall, when requested, submit to such tests and
26 samples as the Board or its representatives may require for the detection of alcohol, narcotics,
27 hypnotics, dangerous drugs, or other controlled substances.

28 If Respondent has a positive drug screen for any substance not legally authorized and not

1 reported to the coordinating physician, nurse practitioner, or physician assistant, and the Board
2 files a petition to revoke probation or an accusation, the Board may suspend Respondent from
3 practice pending the final decision on the petition to revoke probation or the accusation. This
4 period of suspension will not apply to the reduction of this probationary time period.

5 If Respondent fails to participate in a random, biological fluid testing or drug screening
6 program within the specified time frame, Respondent shall immediately cease practice and shall
7 not resume practice until notified by the Board. After taking into account documented evidence
8 of mitigation, if the Board files a petition to revoke probation or an accusation, the Board may
9 suspend Respondent from practice pending the final decision on the petition to revoke probation
10 or the accusation. This period of suspension will not apply to the reduction of this probationary
11 time period.

12 18. **Mental Health Examination.** Respondent shall, within 45 days of the
13 effective date of this Decision, have a mental health examination including psychological testing
14 as appropriate to determine her capability to perform the duties of a registered nurse. The
15 examination will be performed by a psychiatrist, psychologist or other licensed mental health
16 practitioner approved by the Board. The examining mental health practitioner will submit a
17 written report of that assessment and recommendations to the Board. All costs are the
18 responsibility of Respondent. Recommendations for treatment, therapy or counseling made as a
19 result of the mental health examination will be instituted and followed by Respondent.

20 If Respondent is determined to be unable to practice safely as a registered nurse, the
21 licensed mental health care practitioner making this determination shall immediately notify the
22 Board and Respondent by telephone, and the Board shall request that the Attorney General's
23 office prepare an accusation or petition to revoke probation. Respondent shall immediately cease
24 practice and may not resume practice until notified by the Board. During this period of
25 suspension, Respondent shall not engage in any practice for which a license issued by the Board
26 is required, until the Board has notified Respondent that a mental health determination permits
27 Respondent to resume practice. This period of suspension will not apply to the reduction of this
28 probationary time period.


1 If Respondent fails to have the above assessment submitted to the Board within the 45-day
2 requirement, Respondent shall immediately cease practice and shall not resume practice until
3 notified by the Board. This period of suspension will not apply to the reduction of this
4 probationary time period. The Board may waive or postpone this suspension only if significant,
5 documented evidence of mitigation is provided. Such evidence must establish good faith efforts
6 by Respondent to obtain the assessment, and a specific date for compliance must be provided.
7 Only one such waiver or extension may be permitted.

8 19. **Therapy or Counseling Program.** Respondent, at her expense, shall
9 participate in an on-going counseling program until such time as the Board releases her from this
10 requirement and only upon the recommendation of the counselor. Written progress reports from
11 the counselor will be required at various intervals.

12
13 **ACCEPTANCE**

14 I have carefully read the Stipulated Settlement and Disciplinary Order. I understand the
15 stipulation and the effect it will have on my Registered Nurse License and my Public Health
16 Nurse Certificate. I enter into this Stipulated Settlement and Disciplinary Order voluntarily,
17 knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board of
18 Registered Nursing.

19
20 DATED: 08-11-09

21 
JANET ANNE CUMMING
Respondent

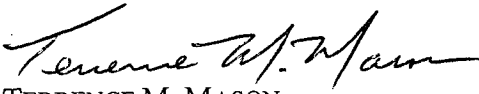
ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Board of Registered Nursing of the Department of Consumer Affairs.

Dated: August 13, 2009

Respectfully Submitted,

EDMUND G. BROWN JR.
Attorney General of California
GREGORY J. SALUTE
Supervising Deputy Attorney General


TERRENCE M. MASON
Deputy Attorney General
Attorneys for Complainant

LA2008600292
Stipulation.rtf

Exhibit A
Accusation No. 2008-310

1 EDMUND G. BROWN JR., Attorney General
of the State of California

2 GREGORY J. SALUTE

Supervising Deputy Attorney General

3 JAMI L. CANTORE, State Bar No. 165410

Deputy Attorney General

4 300 So. Spring Street, Suite 1702

Los Angeles, CA 90013

5 Telephone: (213) 897-2569

Facsimile: (213) 897-2804

6 Attorneys for Complainant

7
8 **BEFORE THE**
9 **BOARD OF REGISTERED NURSING**
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11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 2008-310

13 JANET ANNE CUMMING

3477 Township Ave.

14 Simi Valley, CA 93063

ACCUSATION

15 Registered Nurse License No. 282757

Public Health Nurse Certificate No. 28052.

Respondent.

16
17 Complainant alleges:

18 **PARTIES**

19 1. Ruth Ann Terry, M.P.H., R.N. (Complainant) brings this Accusation
20 solely in her official capacity as the Executive Officer of the Board of Registered Nursing,
21 Department of Consumer Affairs.

22 2. On or about August 31, 1977, the Board of Registered Nursing issued
23 Registered Nurse License Number 282757 to Janet Anne Cumming (Respondent). The
24 Registered Nurse License was in full force and effect at all times relevant to the charges brought
25 herein and will expire on May 31, 2009, unless renewed.

26 3. On or about April 18, 1979, the Board of Registered Nursing issued
27 Public Health Nurse Certificate Number 28052 to Respondent Janet Anne Cumming. The Public
28 Health Nurse Certificate was in full force and effect at all times relevant to the charges brought

1 herein and will expire on May 31, 2009, unless renewed.

2 JURISDICTION

3 4. This Accusation is brought before the Board of Registered Nursing
4 (Board), Department of Consumer Affairs, under the authority of the following laws. All section
5 references are to the Business and Professions Code unless otherwise indicated.

6 STATUTORY PROVISIONS

7 5. Section 2750 of the Business and Professions Code (Code) provides, in
8 pertinent part, that the Board may discipline any licensee, including a licensee holding a
9 temporary or an inactive license, for any reason provided in Article 3 (commencing with section
10 2750) of the Nursing Practice Act.

11 6. Section 118, subdivision (b), of the Code provides that the suspension,
12 expiration, surrender, or cancellation of a license shall not deprive the Board to proceed with a
13 disciplinary action during the period within which the license may be renewed, restored, reissued
14 or reinstated.

15 7. Section 2761 of the Code states, in pertinent part:

16 "The board may take disciplinary action against a certified or licensed nurse or
17 deny an application for a certificate or license for any of the following:

18 "(a) Unprofessional conduct, which includes, but is not limited to, the following:

19

20 "(4) Denial of licensure, revocation, suspension, restriction, or any other
21 disciplinary action against a health care professional license or certificate by another state or
22 territory of the United States, by any other government agency, or by another California health
23 care professional licensing board. A certified copy of the decision or judgment shall be
24 conclusive evidence of that action.

25

26 "(f) Conviction of a felony or of any offense substantially related to the
27 qualifications, functions, and duties of a registered nurse, in which event the record of the
28 conviction shall be conclusive evidence thereof."

1 8. Section 141 of the Code states:

2 “(a) For any licensee holding a license issued by a board under the jurisdiction of
3 the department, a disciplinary action taken by another state, by any agency of the federal
4 government, or by another country for any act substantially related to the practice regulated by
5 the California license, may be a ground for disciplinary action by the respective state licensing
6 board. A certified copy of the record of the disciplinary action taken against the licensee by
7 another state, an agency of the federal government, or another country shall be conclusive
8 evidence of the events related therein.

9 “(b) Nothing in this section shall preclude a board from applying a specific
10 statutory provision in the licensing act administered by that board that provides for discipline
11 based upon a disciplinary action taken against the licensee by another state, an agency of the
12 federal government, or another country.”

13 9. Section 2762 of the Code states, in pertinent part:

14 “In addition to other acts constituting unprofessional conduct within the meaning
15 of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed
16 under this chapter to do any of the following:

17

18 “(b) Use any controlled substance as defined in Division 10 (commencing with
19 Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as
20 defined in Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or
21 injurious to himself or herself, any other person, or the public or to the extent that such use
22 impairs his or her ability to conduct with safety to the public the practice authorized by his or her
23 license.

24 “(c) Be convicted of a criminal offense involving the prescription, consumption,
25 or self-administration of any of the substances described in subdivisions (a) and (b) of this
26 section, or the possession of, or falsification of a record pertaining to, the substances described in
27 subdivision (a) of this section, in which event the record of the conviction is conclusive evidence
28 thereof.”

10. Section 490 of the Code states:

“A board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action which a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.”

11. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

CAUSE FOR DISCIPLINE

(Out of State Discipline on Registered Nurse License)

12. Respondent is subject to disciplinary action pursuant to sections 2761 (a), subsection (4), 2761 (f), 2762, and 490 in conjunction with section 141, in that on or about April 18, 2007, in a disciplinary action entitled, "In the Matter of Janet Anne Cumming" before the State of Washington Department of Health Nursing Care Quality Assurance Commission in Docket No. 06-01-A1092RN, Registered Nurse License No. RN 00112469 issued to Respondent in the state of Washington was indefinitely suspended. The circumstances surrounding the suspension are as follows:

13. On or about April 18, 2007, the State of Washington Department of Health Nursing Care Quality Assurance Commission (Commission) concluded that Respondent had committed unprofessional conduct based on findings of fact, which include but are not limited to, the following:

///

1 (a) On or about March 25, 2004, Respondent was convicted for driving while
2 under the influence (DUI), a gross misdemeanor, in Clallam County, Washington, District Court,
3 Cause No. C00467832.

4 (b) Respondent committed the following acts and/or omissions while
5 employed as a registered nurse at Olympic Care & Rehabilitation in Sequim, Washington:

6 (i) On or about January 8 and 9, 2005, Respondent failed to administer
7 and/or failed to document the administration of medication for patients identified as Patients A,
8 B, C, D, E, F, G, H, I, J, K, L, M, and N.

9 (ii) On or about January 8 and 9, 2005, Respondent failed to check Patient A's
10 blood sugar level and/or failed to document Patient A's blood sugar level, pursuant to physician's
11 orders.

12 (iii) On or about January 8 and 9, 2005, Respondent failed to check Patient B's
13 blood sugar level and/or failed to document Patient B's blood sugar level, pursuant to physician
14 orders. On or about January 8, 2005, Respondent failed to administer insulin and/or failed to
15 document the administration of insulin, pursuant to physician's order.

16 14. On or about April 18, 2007, the Commission Ordered Respondent's
17 credential to practice as a registered nurse in the state of Washington indefinitely suspended. A
18 true and correct copy of the Commission's Findings of Fact, Conclusions of Law, and Final
19 Order of Default are attached as Exhibit A and incorporated herein by reference.

20 PRAYER

21 WHEREFORE, Complainant requests that a hearing be held on the matters herein
22 alleged and that, following the hearing, the Board of Registered Nursing issue a decision:

23 1. Revoking or suspending Registered Nurse License Number 282757 issued
24 to Janet Anne Cumming.

25 2. Revoking or suspending Public Health Nurse Certificate Number 28052
26 issued to Janet Anne Cumming.

27 3. Ordering Janet Anne Cumming to pay the Board of Registered Nursing the
28 reasonable costs of the investigation and enforcement of this case pursuant to Business and

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Professions Code section 125.3.

4. Taking such other and further action as deemed necessary and proper.

DATED: 5/1/08



RUTH ANN TERRY, M.P.H., R.N.
Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

EXHIBIT A

**STATE OF WASHINGTON
DEPARTMENT OF HEALTH
NURSING CARE QUALITY ASSURANCE COMMISSION**

In the Matter of

JANET ANNE CUMMING
Credential No. RN00112469

Respondent.

Docket No. 06-01-A-1092RN

**FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
FINAL ORDER OF DEFAULT
(Failure to Appear)**

This matter comes before the Health Law Judge, Presiding Officer, for a Final Order of Default. Based on the record, the Presiding Officer, on designation by the Nursing Care Quality Assurance Commission (Commission) now issues the following:

Section 1: FINDINGS OF FACT

1.1 On March 2, 1993, the state of Washington issued Respondent a credential to practice as a registered nurse. Respondent's credential is currently active.

1.2 The Department submitted the Declaration of Mary Dale, Health Services Consultant, with attached exhibits.

1.3 On or about March 25, 2004, Respondent was convicted of driving while under the influence (DUI), a gross misdemeanor, in Clallam County, Washington, District Court, Cause No. C00467832 (March 25, 2004, DUI Court Order).

1.4 The following allegations occurred while Respondent was employed as a registered nurse at Olympic Care & Rehabilitation in Sequim, Washington (facility).

A. On or about January 8, and 9, 2005, Respondent failed to administer and/or failed to document administration of medications for Patients A, B, C, D, E, F, G, H, I, J, K, L, M, and N.

B. On or about January 8 and 9, 2005, Respondent failed to check Patient A's blood sugar level and/or failed to document Patient A's blood sugar level, pursuant to physician's orders.

C. On or about January 8 and 9, 2005, Respondent failed to check Patient B's blood sugar level and/or failed to document Patient B's blood sugar level, pursuant to physician orders. On or about January 8, 2005, Respondent failed to administer insulin

ORIGINAL

and/or failed to document administration of insulin, pursuant to physician's order.

1.5 On August 18, 2006, the Commission served Respondent with a copy of the following documents at Respondent's last known address:

- A. Statement of Charges;
- B. Notice of Opportunity for Settlement and Hearing;
- C. Answer to Statement of Charges and Request for Settlement and Hearing;
- D. Stipulated Findings of Fact, Conclusions of Law, and Agreed Order.

1.6 On September 7, 2006, Respondent filed a Request for Extension of Time to answer the Statement of Charges with the Adjudicative Service Unit. By Order Granting Request for Extension, the Presiding Officer granted Respondent's request for an extension of time to file an Answer until October 23, 2006.

1.7 On October 18, 2006, Respondent filed an Answer to Statement of Charges with the Adjudicative Service Unit.

1.8 On October 20, 2006, the Adjudicative Service Unit served the parties with a Scheduling Order/Notice of Status Conference and Protective Order and scheduled a status conference for November 6, 2006.

1.9 On November 7, 2006, the Adjudicative Service Unit served the parties with a Scheduling Order/Notice of Hearing and scheduled a prehearing conference for February 14, 2007, and a hearing for March 15, 2007.

1.10 On November 1, 2007, Respondent filed a request to extend the hearing date.

1.10 On February 5, 2007, the Adjudicative Service Unit served the parties with Prehearing Order No. 1: Order of Continuance and rescheduled the prehearing conference for February 23, 2007.

1.11 Respondent requested an adjudicative proceeding but failed to appear at the scheduled pre-hearing conference. The Presiding Officer granted the Department's motion for an order of default and issued Prehearing Order No. 2: Order of Default and Order Striking Respondent's Witness and Exhibit Lists dated March 2, 2007.

Respondent has not moved to vacate the Order of Default.

Section 2: CONCLUSIONS OF LAW

2.1 The Commission has jurisdiction over Respondent and over the subject matter of this case. RCW 18.130.040.

2.2 The Presiding Officer entered an order of default based on Respondent's failure to appear. Respondent is in default and the Commission may issue a final order based on the evidence presented. RCW 18.130.090(1) and RCW 34.05.440(2).

2.3 Based upon the Findings of Fact, Respondent has committed unprofessional conduct pursuant to RCW 18.130.180(4), (7), (17), and WAC 246-840-710(2)(c) and (d).

2.4 Sufficient grounds exist to take disciplinary action against Respondent's credential. RCW 18.130.160 and 18.130.180.

Section 3: ORDER

The Commission ORDERS:

3.1 Respondent's credential to practice as a registered nurse in the state of Washington is INDEFINITELY SUSPENDED.

3.2 Respondent shall immediately return all credentials to the Commission within ten (10) days of receipt of this Order.

3.3 Respondent may not submit a written petition for reinstatement of credential for at least twenty-four (24) months from the effective date of this Order.

3.4 Prior to petitioning for reinstatement of her credential, Respondent must provide satisfactory evidence of being clean and sober for at least twenty-four (24) consecutive months immediately preceding any such petition. Evidence of being clean and sober shall include but is not limited to random *observed* biological fluid testing, completion of chemical dependency treatment, participation in professional peer support groups and NA/AA, and a recent (within 90 days) chemical dependency evaluation by a commission – approved evaluator. The evaluation shall include:

- A. Respondent's condition or diagnosis;
- B. Conclusions and prognosis;
- C. Recommendations regarding the need for ongoing care and treatment;

D. Professional opinion regarding Respondent's ability to practice nursing with reasonable skill and safety.

3.5 Respondent shall assume all costs of complying with this Order.

3.6 If Respondent violates any provision of this Order in any respect the Commission may take further action against Respondent's credential.

3.7 The effective date of this Order is that date the Adjudicative Service Unit places the signed order into the U.S. mail. Respondent shall not submit any fees or compliance documents until after the effective date of this Order.

Section 4: NOTICE TO PARTIES

This Order is subject to the reporting requirements of RCW 18.130.110, Section 1128E of the Social Security Act, 45 CFR Part 61, and any other applicable interstate/national reporting requirements. If adverse action is taken, it must be reported to the Healthcare Integrity Protection Data Bank.

Either Party may file a **petition for reconsideration**. RCW 34.05.461(3); 34.05.470. The petition must be filed within ten (10) days of service of this Order with:

Adjudicative Service Unit
PO Box 47879
Olympia, WA 98504-7879

and a copy must be sent to:

State of Washington
Department of Health
Nursing Care Quality Assurance Commission
PO Box 47864
Olympia WA 98504-7864

The petition must state the specific grounds upon which reconsideration is requested and the relief requested. The petition for reconsideration is considered denied twenty (20) days after the petition is filed if the Adjudicative Service Unit has not responded to the petition or served written notice of the date by which action will be taken on the petition.

A petition for judicial review must be filed and served within thirty (30) days after service of this Order. RCW 34.05.542. The procedures are identified in chapter 34.05 RCW, Part V, Judicial Review and Civil Enforcement. A petition for reconsideration is

not required before seeking judicial review. If a petition for reconsideration is filed, however, the thirty (30) day period will begin to run upon the resolution of that petition. RCW 34.05.470(3).


The Order remains in effect even if a petition for reconsideration or petition for review is filed. "Filing" means actual receipt of the document by the Adjudicative Service Unit. RCW 34.05.010(6). This Order was "served" upon you on the day it was deposited in the United States mail. RCW 34.05.010(19).

DATED: April 18, 2007.

STATE OF WASHINGTON
DEPARTMENT OF HEALTH
NURSING CARE QUALITY ASSURANCE
COMMISSION


HEALTH LAW JUDGE
PRESIDING OFFICER

PRESENTED BY:


JANET STAIGER, WSBA #16573
DEPARTMENT OF HEALTH STAFF ATTORNEY

4/16/07
DATE

FOR INTERNAL USE ONLY:

PROGRAM NO. 2005-01-0024RN

FINDINGS OF FACT, CONCLUSIONS OF LAW
AND FINAL ORDER ON DEFAULT (Failure to Appear)
DOCKET NO. 06-01-A-1092RN

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